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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, DC 20554

Re: Ex Parte Presentation - CC Docket No. 97-158
In the Matter of Southwestern Bell Telephone Company's
Tariff F.C.C. No. 73

Dear Mr. Caton:

Yesterday, James Miller, Seth Gross, and I, all of AT&T Corp., met via telephone with James Schlichting, David Konuch, and Mark Seifert of the Common Carrier Bureau's Competitive Pricing Division to discuss Southwestern Bell Telephone Company's ("SWBT's") Transmittal No. 2633.¹ In that transmittal, SWBT stated that it filed the tariff modification, in part, in response to an AT&T request for proposal for DS-3 service in Dallas, Texas. AT&T also requested and received proposals from several other potential DS-3 service providers. Upon consideration of each of the proposals, AT&T selected a DS-3 service provider other than SWBT, because that provider's service most completely met AT&T's business needs. AT&T then notified

¹ Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal No. 2633. By Order dated June 13, 1997, the Bureau had suspended for five months the pending tariff and initiated an investigation into the lawfulness of that tariff. Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal No. 2633, Suspension Order, DA 97-1251 (rel. June 13, 1997).

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SWBT that AT&T "decided to pursue other supply options in Dallas for [its DS3 requirements]." ²

SWBT is not entitled to the pricing flexibility it seeks in its tariff filing, or to a finding that the DS-3 marketplace is competitive in SWBT's serving area, merely because AT&T selected another provider. As AT&T made clear in its Petition to Suspend and Investigate³ and Opposition to Direct Case,⁴ SWBT's RFP tariff: (1) violates the Commission's policy prohibiting dominant local exchange carriers ("LECs") from offering contract tariffs, (2) is not supported by the Commission's DS-3 ICB Order,⁵ (3) violates Section 69.3(e)(7) of the Commission's Rules requiring dominant LECs to offer averaged rates throughout their individual study areas, and (4) does not satisfy the requirements of the competitive necessity doctrine, even if that doctrine were to apply in this case -- which it does not.

The Commission has allowed LECs limited pricing flexibility. For example, LECs may use zone density pricing, which permits them to gradually deaverage their special access rates by zones in a study area.⁶ SWBT has not taken advantage of this available pricing flexibility.

² Letter from G. P. Terry, Southwestern State Infrastructure and Access Management Vice President, AT&T, to David Young, Acting General Manager-Regional Sales, Southwestern Bell Telephone, dated July 17, 1997. See Reply of Southwestern Bell Telephone Company, filed September 12, 1997, Exhibit A.

³ Petition of AT&T Corp. To Suspend and Investigate, Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal No. 2633, filed May 16, 1997.

⁴ Opposition to Direct Case of Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal No. 2633, filed August 28, 1997.

⁵ Local Exchange Carriers' Individual Case Basis DS-e Service Offerings, Memorandum Opinion and Order, 4 FCC Rcd 8634 (1989) ("DS-3 ICB Order").

⁶ Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369, 7451-57 (1992), recon., 8 FCC Rcd 7341, vacated in part and remanded sub nom. Bell Atlantic Tel. Cos. V. FCC, 24 F.3d 1441 (1994), reaffirmed on remand in pertinent part, 9 FCC Rcd 5154, 5192-5200 (1994).

AT&T's decision to use an alternative DS-3 provider is not dispositive as to whether the DS-3 market is competitive. SWBT had the opportunity to provide evidence as to the competitiveness of the marketplace in its Direct Case, but failed to do so. In fact, SWBT's own market data indicate that while there may be emerging, but as yet not vigorous, competition for high capacity access services in Dallas, it retains the overwhelming share of the market in other major cities in its serving area, including St. Louis (85%) and Kansas City (93%).⁷ Therefore, because a determination of whether the competitive necessity test is available in a market is highly fact-specific, and SWBT has failed to address specific questions asked by the Bureau in the Suspension Order, the Commission has no choice but refrain from applying the competitive necessity doctrine in this situation.

Two copies of this Notice are being submitted to the Secretary of the Commission in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

Charles Griffin
(asr)

cc: J. Schlichting
D. Konuch
M. Seifert

⁷ See Southwestern Bell Transmittal No. 2622, filed March 25, 1997, Southwestern Bell HICAP Track, Third Quarter 1996, p. 7.